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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

R.S.A. No. 594 of 2004

Date of decision: 20.9.2007

Nirmala Devi **...Appellant**

Versus

Satya Devi and another **...Respondents**

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Mr. Rajesh Gupta, Advocate for the appellant.

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RAJESH BINDAL, J.

The appellant/plaintiff is in second appeal against the concurrent findings of fact by both the Courts below whereby suit for permanent injunction filed by her was dismissed.

The claim made in the suit was that the appellant alongwith respondent No.1 purchased two plots measuring 24' X 300' making total of 48' X 300' vide sale deed dated February 5, 1971 in equal shares. At the time of partition, only area measuring 48' X 270' was partitioned and the balance was not. It is further submitted that out of remaining area i.e. 48' X 30', area measuring 24' X 30' is in illegal possession of Tharaya Ram whereas the balance of 24' X 30' is still in joint ownership of the parties. The prayer made in the suit is for permanent injunction restraining the respondents from raising construction in open area of 24' X 30', which was still under joint ownership of the parties. However, both the Courts below found that at the time of purchase of plot, no measurement was made at the spot and on actual measurement thereof, it was found that area was merely 48' X 270', which was partitioned between the parties on February 14, 1978. On the southern side of the said property, it was found by the Courts below that there was property of Ram Nath, which was sold by him to Sunder Mal and Parkash Chand sons of Tharaya Ram vide sale deed Ex.

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D-2, which was subsequently sold to other persons. Both the Courts below found that actual measurement of the plots purchased by both the parties in joint ownership was 48' X 270' only. The claim made by the appellant-plaintiff that even after partition of this area, another area should also be distributed is clearly meritless.

Accordingly, I do not find any merit in the present appeal and the same is dismissed.

September 20, 2007 **(Rajesh Bindal)**
Pka **Judge**